

UNITED STATES OF AMERICA  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,	)	
	)	
vs.	)	CRIMINAL DOCKET NO. 05-30042-MLW
	)	
CESAR CRUZ,	)	
Defendant	)	

**DEFENDANT'S AMENDED MOTION FOR JURY QUESTIONNAIRE**

The Defendant herein, CESAR CRUZ, hereby requests that this court require the prospective jurors in this case to complete the attached questionnaire in order to help insure that the Defendant will have a jury that is not infected with race or other prejudice. In support of his Motion, the Defendant, through counsel, states that:

1. The Defendant, CESAR CRUZ, is an Hispanic male charged with the offenses of conspiracy to possess with intent to distribute and distribution of cocaine, and possession with intent to distribute and distribution of cocaine - aiding and abetting;
2. The principal government witnesses consist of some Caucasian law enforcement officers and an Hispanic informant/cooperating witness;
3. Recently the District Court of Massachusetts allowed the use of the proposed questionnaire in a case where a non-white male was charged with the felon in possession of a firearm offense. In that case, a substantial number of the jurors answered that they believed that black or Hispanic men are more likely than members of other races to commit crimes;

4. In pretrial discussions with the Government in preparation of trial defense counsel believes that the Government may have listed evidence of gang affiliation of Defendant Cesar Cruz and/or of the cooperating witness.
5. As a result, the Defendant requests permission to amend his jury questionnaire as attached;
6. The Affidavit of Counsel in support of this Motion is attached and incorporated;
6. A fair and unbiased jury is more likely to be seated if the proposed jury questionnaire is employed than would be seated if the issue of race and gang affiliation is either not raised with the venire or is raised to the venire as a group. In addition, less time is likely to be consumed through use of the questionnaire than through the use of individual voir dire.

WHEREFORE, the Defendant respectfully requests that the proposed questionnaire be completed by the venire before any voir dire is conducted.

Respectfully submitted  
CESAR CRUZ, The Defendant

/s/ Joseph A. Franco, Esq.  
By His Attorney  
Joseph A. Franco, Esq.  
BBO# 543038  
51 Park Avenue, Suite 7  
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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on April 26, 2006.

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Joseph A. Franco, Esq.

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**AFFIDAVIT OF COUNSEL JOSEPH A. FRANCO IN SUPPORT OF  
DEFENDANT'S MOTION FOR JURY QUESTIONNAIRE**

Now comes Joseph A. Franco and states that he has personal knowledge of the facts contained herein and makes oath that they are true.

1. I, Joseph A. Franco, am a duly authorized and practicing attorney in the Commonwealth of Massachusetts and am admitted to practice in this Court. I am a member of the CJA panel and the District and Superior Court Bar Advocates for Hampden County; and I am on the certified murder list for the Commonwealth of Massachusetts for trials;
2. I represent Cesar Cruz in the above captioned matter;
3. I have tried numerous criminal cases to juries in the State courts and have participated in hearings in the federal courts;

4. In my experience and upon information and belief, the venires in both state and federal court are overwhelmingly white/Caucasian. When issues involving race prejudice and/or gang affiliation are raised in the Massachusetts State District and Superior Courts, individual voir dire is invariably required in order to avoid infecting the entire venire and to encourage candid responses from prospective jurors;
5. In my experience, it is especially necessary to inquire into potential race prejudice and gang affiliation issues in cases where the principal government agents are white and the Defendant is Hispanic or black;
6. The proposed questionnaire was used in the case of United States v. Wilfred Touset, 03-30010-MAP and was found to be effective in bringing potential racial prejudice to light.

Signed under the pain and penalty of perjury this 25<sup>th</sup> day of April, 2006.

/s/ Joseph A. Franco, Esq.  
Joseph A. Franco, Esq.

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**JURY QUESTIONNAIRE**

This questionnaire is being used to assist in jury selection in the above named case.

Please answer all questions below completely and truthfully. Your answers will be used only for the purpose of selecting a jury in this case. There are no right or wrong answers to these questions. Please keep in mind that you are answering these questions under oath and must be truthful.

1. You have no legal obligation to like or feel comfortable with an Hispanic persons but you do have an obligation to tell the court your feelings candidly and accurately. Do you have any feelings or opinions about Hispanic people that would cause you to question your ability to be impartial in evaluating the evidence in this case? \_\_\_\_\_
2. Do you believe that young Hispanic men are more likely than Caucasian men to commit crimes? \_\_\_\_\_
3. Do you believe that young Hispanic men are more likely than Caucasian men to possess, be involved in the possession, sale or distribution of illegal drugs? \_\_\_\_\_
4. Have you read about the facts of this case in the newspapers, or heard about it on the radio or television? \_\_\_\_\_

5. Are you aware of any bias or prejudice in regard to this case which might affect its outcome?  
By bias or prejudice, I mean, do you favor either side or oppose either side for any reason whatsoever? \_\_\_\_\_
6. The Defendant in a criminal case has an absolute right not to testify. Would you hold it against the Defendant in any way if he did not testify in this case and tell his side of the story? \_\_\_\_\_
7. Have you or any member of your family, or any close acquaintance of yours, ever worked for a law enforcement agency, such as the D.E.A., the F.B.I., the Boston Police Department, any other police department, the State Police, the Metropolitan Police, The District Attorney's Office, the United States Attorney's Office, the Attorney General's Office, and so forth? \_\_\_\_\_  
\_\_\_\_\_
8. Would you believe the testimony of a law enforcement officer over the testimony of a civilian witness simply because of his or her position as a law enforcement officer? \_\_\_\_\_
9. Is there any reason why you cannot fairly and impartially reach a verdict in this case based solely on the evidence presented to you and accepting the law as I instruct you in regard to it? \_\_\_\_\_
10. There may be testimony in this case regarding gangs and gang affiliation. It may be alleged that one or more defendant may be a member of the so-called "Latin Kings". What, if anything do you know about the "Latin Kings"? \_\_\_\_\_



11. There may be testimony in this case regarding gangs and gang affiliation. It may be alleged that one or more defendant may be a member of the so-called "Latin Kings". Would your knowledge or impressions of the "Latin Kings" tend to render you unable to be fair and impartial in deciding this matter? \_\_\_\_\_

Juror Number \_\_\_\_\_

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I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on April 11, 2006.

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Joseph A. Franco, Esq.